

Digital Copier Agreement

Agreement made this _____ day of _____, 20____ (hereinafter referred to as the "Effective Date"), by and between the **Georgia Technology Authority** (hereinafter referred to as "GTA"), and _____, whose principal place of business is located at _____ (hereinafter referred to as "Contractor").

WITNESSETH

WHEREAS, pursuant to O.C.G.A. § 50-25-4, the Georgia Technology Authority ("GTA") issued a Request for Proposal No. GTA-000119, soliciting proposals for the provisioning of digital copier equipment and installation and maintenance services for such equipment, as more particularly described therein ("RFP");

WHEREAS, Contractor submitted a proposal to GTA in response to the RFP ("Proposal");

WHEREAS, Contractor's Proposal was deemed by the GTA to be the proposal most advantageous to the State.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **Equipment.** The Contractor shall serve as a source of supply for the items of Equipment identified in the RFP to the various Agencies of the State. As used herein, "Agency" or "Agencies" shall include any and all State of Georgia entities, including but not limited to departments, agencies, authorities, commissions, boards, colleges and universities. Contractor agrees to supply to each and every Agency all of such Agency's total requirements for the Equipment. Agencies shall place individual orders with Contractor by issuing a Purchase Order ("PO") referencing this Contract and detailing the items ordered. No shipment shall be authorized until such issuance of a PO. In some instances, where the Contractor has agreed, purchases may also be made by use of the Purchasing Card. Agencies may lease or purchase the Equipment under the following terms and conditions:
 - a. **Lease.** Under the terms of a separate lease agreement, but subject to the terms and conditions of this Agreement and the RFP, Contractor agrees to lease to Agencies the Equipment identified in a schedule attached to such lease agreement. Such schedule may be amended to include any additional Equipment added from time to time by written agreement of both parties.
 - b. **Purchase.** Under the terms of a separate purchase agreement, but subject to the terms and conditions of this Agreement and the RFP, Contractor agrees to sell to Agencies the Equipment identified in a schedule attached to such purchase agreement. Such schedule may be amended to include any additional Equipment added from time to time by written agreement of both parties.
2. **Services.** In addition to providing the leased or purchased Equipment, Contractor agrees to provide to Agencies the following installation and maintenance services on the Equipment (collectively and individually, the "Services"):
 - a. **Installation.** At its sole cost and expense, Contractor shall install the Equipment at the location(s) designated by the Agency and, as agreed by the parties in writing, any additional sites designated for additional items of Equipment. Installation Service includes unpacking, assembly, training and demonstration of Equipment.
 - b. **Maintenance.** At its sole cost and expense, Contractor shall maintain the Equipment during the Term. Unless otherwise agreed by the parties in writing, Maintenance Service shall be provided: (i) in the case of leased Equipment, during the entire term of the lease; and (ii) in the case of

purchased Equipment, for one (1) year after Acceptance as set forth in Section 5 below. Maintenance Service, as defined herein, includes the following:

- (1) Isolate any problems with the Equipment and restore service within the Equipment Mean Time To Repair (as defined below) following receipt of Agency's notification that the Equipment is inoperative. Mean Time To Repair ("MTTR") is defined as the average time elapsed from the time the Contractor detects or is notified of a failure of Equipment or other degradation in performance of the Equipment covered by this Agreement until such time as the Equipment's performance is restored to standard functionality by replacing (either temporarily or permanently) or repairing the failed Equipment. The MTTR objective shall be within _____ (_____) hours after notice, during the Agency's regular business hours. For this purpose the Contractor shall have full and free access to the Equipment.
- (2) Investigate trouble reports initiated by the Agency and repair or replace, any of the Equipment which fails to meet the manufacturer's published operating specifications for the Equipment during the Term of this Agreement.
- (3) If an Agency, in its sole discretion, determines that a unit of Equipment:
(a) has performed unsatisfactorily (including but not limited to poor copy quality) during at least five percent (5%) of any calendar month, calculated using the Agency's regular business hours; or (b) has experienced more than two (2) malfunctions per calendar month requiring Contractor corrections, then the Contractor shall replace such Equipment with new equipment from a manufacturer of Agency's choice at the time of replacement, in accordance with the terms of the Contractor's warranty set forth below.

Maintenance Service shall not include or apply to: (a) an Agency's in-house wiring; (b) repair or replacement of failed Equipment caused by factors outside of the Equipment, such as fire, accident, misuse, vandalism, water, or lightning; or (c) power or back-up power to or from the Equipment.

- c. Moves. At an Agency's request, Contractor may move the Equipment to another State location for an additional price not to exceed Contractor's cost for such move.
3. Order of Precedence.
- a. The contractual relationship between Contractor and GTA shall be governed by the following order of precedence: (i) the provisions of this Agreement, including all exhibits attached hereto and incorporated into this Agreement; (ii) the RFP (excluding Appendix B, Sample Contract); (iii) the Contractor's Proposal; and (iv) the Rules of the GTA, which are incorporated herein by reference.
 - b. The contractual relationship between Contractor and an Agency shall be governed by the following order of precedence: (i) the provisions of the applicable lease or purchase agreement; (ii) the provisions of this Agreement, including all exhibits attached hereto and incorporated into this Agreement; (iii) the RFP (excluding Appendix B, Sample Contract); (iii) the Contractor's Proposal; and (iv) the Rules of the GTA.

4. Term and Renewal. The "Term" shall begin on the Effective Date and end as of the end of the then current fiscal year (July 1 - June 30). Thereafter, the Agreement may be renewed at the sole discretion of GTA on a year-to-year basis for up to four (4) fiscal year periods. GTA may, at its sole option, renew as to all of the Services to be provided hereunder or as to only selected Services. The terms and conditions of this Agreement shall apply during any renewals of the Term.
5. Payment and Acceptance. An Agency will pay Contractor for all undisputed amounts within thirty (30) days of receipt of invoice, provided that the Equipment and Services have been accepted by the Agency as hereinafter provided. Contractor shall deliver the Equipment and/or perform any Services in accordance with the time specified in a PO issued by the Agency. Unless otherwise agreed to by Contractor and the Agency, Contractor shall provide written notification of completion of the delivery, or other performance of Services, to the Agency ("Delivery Notice"). The Agency shall have thirty (30) days from the date of receipt of the Delivery Notice to provide Contractor with written notification of acceptance or rejection due to unsatisfactory performance. Acceptance by the Agency may only be accomplished by an affirmative act on the part of the Agency and the failure of the Agency to issue an acceptance notice shall not be deemed an acceptance of the Equipment or Services or any portion thereof. In the event the Agency issues a rejection notice, Contractor shall, as quickly as is practicable, correct at its expense all deficiencies caused by Contractor. The Agency shall not unreasonably withhold or delay such acceptance or rejection.
6. Warranty. Contractor warrants that in providing the Equipment and performing the Services:
 - a. Contractor shall assign to the Agency the manufacturers' warranties for Equipment furnished to such Agency;
 - b. Any Equipment will conform to generally applicable standards in the industry, will be new and free from any and all defects in material, packaging and workmanship, and will meet all specifications set forth in the RFP and this Agreement and any documents referenced herein. Contractor will, without charge to the Agency, correct any defects and make any additions, modifications or adjustments to any of the Equipment as may be necessary to keep the Equipment in operating order in accordance with specifications at all times during the applicable warranty period. Unless otherwise agreed by the parties in writing, this warranty shall apply: (i) in the case of leased Equipment, during the entire term of the lease; and (ii) in the case of purchased Equipment, for one (1) year after Acceptance as set forth in Section 5 above.
 - c. Contractor will strictly comply with the descriptions and representations as to the Services (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) which appear herein and Contractor and any employees of Contractor will perform the Services on time;
 - d. In addition to any express and implied warranties provided to the Agency under law or given under other provisions of this Agreement, Contractor hereby expressly warrants that the Services to be performed hereunder will be performed in a workmanlike manner, subject to the supervision and instructions provided by the Agency, and that all work assigned will be performed in a manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time Services are provided;
 - e. The Equipment and Services will not be in violation of any applicable law, rule or regulation, and Contractor will obtain all permits and licenses required to comply with such laws and regulations;
 - f. The Equipment and Services will not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any Intellectual Property rights. As used herein, "Intellectual Property" shall mean any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, test results, knowledge, techniques, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the foregoing, whether or not registered as of the Effective Date or at any later date;
 - g. Contractor is the lawful owner or licensee of all software, hardware, methods, methodologies and any pre-existing Intellectual Property in the Equipment or used in the performance of the Services contemplated hereunder and the Contractor has the right to permit the Agency access to or use of such software, hardware, methods, methodologies and Intellectual Property;

- h. Contractor will screen all employees supplied to the Agency to ensure that each employee is fully qualified to perform the Services, and if required by law or ordinance, is validly licensed and/or has obtained all requisite permits to perform such Services for the Agency;
 - i. All Equipment provided pursuant to this Agreement will interface, integrate and be functionally compatible with and will perform on any and all of the Agency's hardware and software configuration(s). Unless otherwise agreed by the parties in writing, this warranty shall apply: (i) in the case of leased Equipment, during the entire term of the lease; and (ii) in the case of purchased Equipment, for one (1) year after Acceptance as set forth in Section 5 above;
 - j. All software provided hereunder and any update or revision to any of the software will be free from defects and will meet all specifications set forth in the RFP and this Agreement and any documents referenced therein. Contractor will, without charge to the Agency, correct any defects and make any additions, modifications or adjustments to any of the software or any update or revision to any software as may be necessary to keep the software in operating order in accordance with specifications at all times during the applicable warranty period. Unless otherwise agreed by the parties in writing, this warranty shall apply: (i) in the case of leased Equipment, during the entire term of the lease; and (ii) in the case of purchased Equipment, for one (1) year after Acceptance as set forth in Section 5 above.
- 7. License and Intellectual Property Rights. Contractor hereby grants to the Agency and all authorized users hereunder an irrevocable, perpetual, nonexclusive, worldwide, fully paid up, royalty-free license and/or sublicense to (i) use, execute, maintain, reproduce, modify, display, perform, and distribute copies of such Intellectual Property; and (ii) authorize others to do any or all of the foregoing. The Agency may copy any of the software as necessary to efficiently utilize the software. Without limiting the generality of the foregoing, such rights shall include copying rights granted to "owners of copies" under federal copyright laws of the United States, plus copying: (i) for backup, archive or emergency restart purposes; (ii) to replace worn copies; (iii) to understand the contents of machine readable materials; (iv) to migrate the software for use on other computers and/or hardware; and (v) to store the software at any off premise location which the Agency uses for storage purposes.
- 8. Shipping, Delivery and Return. Contractor shall pay for packing, crating, and shipping of the Equipment to and from an Agency's location. Shipment/Delivery shall be FOB: Destination. Unless title to the Equipment is transferred to the Agency pursuant to a separate purchase agreement, Equipment will be returned in the same mode of shipment unless otherwise mutually agreed upon. Equipment will be returned in the same condition as received, normal wear and tear excepted.
- 10. Indemnification.
 - a. Contractor hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless the State of Georgia, its Agencies, GTA and their officers and employees (hereinafter collectively referred to as "Indemnitees"), of and from any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, for any loss or damage for bodily injury, property damage and attorney's fees related thereto caused by, growing out of, or otherwise happening in connection with this Agreement, due to any act or omission on the part of Contractor, its agents, employees, subcontractors, or others working at the direction or on behalf of Contractor. This indemnification applies notwithstanding the fact that third parties or any of the Indemnitees may be partially responsible for the events giving rise to the claim; or the claim results in a monetary obligation that exceeds any contractual commitment. However, if any of the Indemnitees or third parties are partially responsible for the events giving rise to the claim, Contractor's indemnification hereunder shall apply only to the extent that Contractor contributed to the events. This indemnification does not apply to the extent of the willful or intentional misconduct or sole negligence of the Indemnitees.
 - b. Contractor shall at its expense defend the Indemnitees of any claim, suit or other demand asserted against the Indemnitees by any third party alleging that any Equipment or Services as provided by Contractor infringes a third party's Intellectual Property rights and shall indemnify the Indemnitees in the amount of any final judgment or settlement of such claim, suit or other demand. Contractor shall be under no obligation to defend or indemnify the Indemnitees as set forth in this Section to the extent that such third party claim, suit, or other demand arises out of or

relates to: (i) Contractor's compliance with Agency's specifications; (ii) a combination of the Equipment and/or Services with products or services not provided by Contractor; (iii) a modification of the Equipment or Services that is inconsistent with the terms of this Agreement or the RFP; or (v) information, data, or other content not provided by Contractor. With respect to any pending or threatened claim, suit or other demand as to which Contractor is the indemnifying party, Contractor shall obtain for Agency the right to continue using the Equipment and/or Services or alternatively replace or modify the Equipment and Services so that they are functionally equivalent but non-infringing.

- c. If and to the extent such damage or loss as covered by this Indemnification provision is covered by the State of Georgia Tort Claims Fund (the "Fund"), Contractor agrees to reimburse the Fund. To the full extent permitted by the Constitutions and the laws of the State of Georgia and the terms of the Fund, Contractor and its insureds waive any right of subrogation against the State of Georgia, the Indemnified Parties and the Fund and insurers participating thereunder, to the full extent of this indemnification.
- d. Contractor shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnitees. No settlement or compromise of any claim, loss or damage entered into by Indemnitees shall be binding upon Contractor unless approved in writing by Contractor. No settlement or compromise of any claim, loss or damage entered into by Contractor shall be binding upon Indemnitees unless approved in writing by Indemnitees.
- e. Contractor's obligation to indemnify any Indemnitee will survive the expiration or termination of this Agreement by either party for any reason.

10. Personnel.

- a. Contractor warrants that all persons assigned by it to the performance of this Agreement shall be employees or authorized subcontractors of Contractor and shall be fully qualified to work under this Agreement. Contractor shall ensure that an adequate number of appropriately qualified personnel are employed and available to provide the Services in accordance with RFP and this Agreement.
- b. All of Contractor's or a subcontractor's personnel shall comply with the Agency's reasonable confidentiality and security requirements while on Agency's premises. In the event that any of Contractor's or a subcontractor's personnel do not comply with such confidentiality and security requirements, the Agency, in its sole reasonable discretion, may have the personnel removed from the premises.
- c. Personnel commitments made in Contractor's proposal (if any) shall not be changed unless approved by the Agency. If the Agency believes that the performance or conduct of any person employed or retained by Contractor to perform any Services hereunder is unsatisfactory for any reason or is not in compliance with the provisions of this Agreement, the Agency shall so notify Contractor in writing and Contractor shall promptly address the performance or conduct of such person, or, at the Agency's request, immediately replace such person with another person acceptable to the Agency and with sufficient knowledge and expertise to perform the Services in accordance with this Agreement.

11. Termination.

- a. Each party has the right to terminate this Agreement if the other party breaches or is in default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within ten (10) days after receipt of notice of such default (or such additional cure period as the nondefaulting party may authorize).
- b. GTA may terminate this Agreement, in whole or in part, by written notice to Contractor and may regard Contractor in default of this Agreement if Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.
- c. GTA may terminate this Agreement, in whole or in part, immediately, without notice, if: (i) GTA deems that such termination is necessary to prevent or protect against fraud or otherwise protect

- any Agency's personnel, facilities or services, or (ii) Contractor is debarred or suspended from performing services on any public contracts.
- d. GTA may terminate this Agreement, in whole or in part, for convenience upon thirty (30) days prior written notice to Contractor.
 - e. GTA may terminate this Agreement, in whole or in part, with or without cause upon thirty (30) days prior written notice to Contractor.
 - f. Should there be any protest of the RFP or the award of this Agreement to Contractor which continues past the Effective Date and which is ultimately determined adversely to GTA's RFP or award of this Agreement, then GTA may terminate this Agreement by written notice to Contractor specifying the termination date.
 - g. Upon the termination or expiration of this Agreement, Contractor promptly shall return to the Agencies all papers, materials and other Agency property then in its possession, including but not limited to all work in progress as is appropriate in its then-existing form (in object code and source code to the extent such work is comprised of software, and in machine readable and printed formats to the extent such work is comprised of documentation) to such Agency.
12. Funding. The parties acknowledge that institutions of the State of Georgia are prohibited from pledging the credit of the State. If the source of payment for the charges payable hereunder no longer exist or are determined to be insufficient, this Agreement shall terminate without further obligation of the Agency as of that moment. The determination of the Agency as to the occurrence of the events stated herein shall be conclusive.
13. Taxes. All fees payable to Contractor hereunder shall be net of any and all taxes that the Contractor may be required by law to collect in connection with the provision of the Services hereunder. Contractor shall be solely responsible for the payment of any and all taxes lawfully imposed upon it, including but not limited to taxes on property owned, leased or used by Contractor; franchise or privilege taxes on Contractor's business; gross receipts taxes to which Contractor is subject; and income taxes. By this paragraph, GTA makes no representation whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity. Upon request, GTA will provide a certificate of tax exemptions which apply to this Agreement.
14. Disclaimer Of Certain Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, UNDER ANY THEORY OF TORT, CONTRACT, INDEMNITY, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO PROVIDER'S OBLIGATIONS TO INDEMNIFY ANY INDEMNITEE.
15. Assignment. Contractor shall not assign or subcontract the whole or any part of this Agreement without GTA's prior written consent.
16. Cooperation and Transition of Services.
- a. In the event that an Agency has entered into or enters into agreements with other contractors or government institutions for additional work related to the Services provided hereunder, Contractor agrees to cooperate fully with such other parties.
 - b. Upon expiration or earlier termination of this Agreement or any Services provided hereunder, Contractor shall accomplish a complete transition of the Services from Contractor to the Agency, or to any replacement provider designated by such Agency, without any interruption of or adverse impact on the Services or any other services provided by third parties. Contractor shall cooperate fully with such Agency or such replacement provider and promptly take all steps required to assist in effecting a complete transition. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services hereunder.

- c. Provider shall not commit any act which will interfere with the work performed by any third party as set forth herein.
17. Record Retention and Audit Rights. Contractor shall, and shall cause each of its subcontractors to, maintain accurate books, records, documents and other evidence concerning Contractor's financial status, costs, expenses, provision of Equipment and performance of Services under this Agreement (collectively, "Records") for the latter of: (a) five (5) years after the final payment under this Agreement, (b) for such period (if any) as is required by applicable statute, or (c) for such period (if any) as is set forth in the RFP. Contractor's accounting procedures and practices shall conform to generally accepted accounting principles ("GAAP") and the costs properly applicable to this Agreement shall be readily ascertainable therefrom. The Agency, on its own or by and through the State Auditor, shall have the right, exercisable at any reasonable time during normal business hours, to inspect and audit any Records. Upon request, Contractor shall deliver the required documentation and records on the date and at the location specified by the Agency or State Auditor or other duly authorized officer of the State of Georgia.
18. Insurance.
- a. Contractor shall procure and maintain insurance which shall protect the Contractor and the State of Georgia from any claims for bodily injury, property damage, or personal injury which may arise out of operations under this Agreement. Contractor shall procure the insurance policies at the Contractor's own expense and shall furnish to GTA an insurance certificate listing the State of Georgia as certificate holder. The insurance certificate must document that the liability insurance coverage purchased by the Contractor includes contractual liability coverage to protect the State. In addition, the insurance certificate must provide the following information:
- (1) Name and address of authorized agent;
 - (2) Name and address of insured;
 - (3) Name of insurance company (licensed to operate in Georgia);
 - (4) Description of coverage in standard terminology;
 - (5) Policy period;
 - (6) Policy Number;
 - (7) Limits of liability;
 - (8) Name and address of certificate holder;
 - (9) Acknowledgment of notice of cancellation to the State;
 - (10) Signature of authorized agent;
 - (11) Telephone number of authorized agent; and
 - (12) Details of policy exclusions in comments section of Insurance Certificate.
- b. Contractor is required to maintain the following insurance coverages during the Term of this Agreement:
- (1) Workers Compensation Insurance (Occurrence) in the amounts of the statutory limits established by the General Assembly of the State of Georgia (A self-insurer must submit a certificate from the Georgia Board of Workers Compensation stating that Contractor qualifies to pay its own workers compensation claims.) In addition, Contractor shall require all subcontractors occupying the premises or performing work under this Contract to obtain an insurance certificate showing proof of Workers Compensation Coverage.
 - (2) Commercial General Liability Policy (Occurrence), to include contractual liability. The Commercial General Liability Policy shall have dollar limits sufficient to insure that there is no gap in coverage between this policy and the Commercial Umbrella Policy described below.
 - (3) Business Auto Policy (Occurrence) to include but not be limited to liability coverage on any owned, non-owned and hired vehicle used by Contractor or Contractor's personnel in the performance of this Agreement. The Business Automobile Policy shall have dollar limits sufficient to insure that there is no gap in coverage between this policy and the Commercial Umbrella Policy required under this Agreement.
 - (4) Commercial Umbrella Policy (Occurrence), which must provide the same or broader coverages than those provided for in the above Commercial General Liability and Business

Auto Policies. Policy limits for the Commercial Umbrella Policy shall have an annual aggregate limit of \$3,000,000.

- c. The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed or allowed to lapse for any reason until at least sixty (60) days prior written notice has been given to GTA. Certificates of Insurance showing such coverage to be in force shall be filed with GTA prior to commencement of any work under this Agreement. The foregoing policies shall be obtained from insurance companies licensed to do business in Georgia and shall be with companies acceptable to GTA. All such coverage shall remain in full force and effect during the initial Term and any renewal or extension thereof.
19. Independent Contractor. In its relationship with GTA and the State of Georgia and for purposes of performing any services assigned under this Agreement, Contractor warrants that it is an independent contractor. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractor(s), including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. Contractor warrants that all persons assigned to perform services under this Agreement are employees of Contractor or employees of a subcontractor approved by GTA as specified in this Agreement. Neither Contractor nor any of its agents, servants, employees, subcontractors or suppliers shall become or be deemed to become agents, servants, or employees of GTA or the State of Georgia. This Agreement shall not be construed so as to create a partnership or joint venture between Contractor and the State of Georgia or any of its agencies.
20. Waiver and Severability. The waiver by either party of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement. Any such waiver must be in writing in order to be effective, and no such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed in such a manner as to carry out the full intention of the parties. Section titles or references used in this Agreement have no substantive meaning or content and are not a part of this Agreement.
21. Applicable Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia, U.S.A, without regard to its conflict of laws principles. Any lawsuit or other action based on a claim arising from this Agreement shall be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia.
22. Notices. All notices, requests, or other communications (excluding invoices) hereunder shall be in writing and either transmitted via overnight courier, electronic mail, hand delivery or certified or registered mail, postage prepaid and return receipt requested to the parties at the following addresses. Notices will be deemed to have been given when received.

To GTA	To Contractor

23. Drug Free Work Place.
- a. If Contractor is an individual, he or she hereby certifies that he or she will not engage in the unlawful sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.
- b. If Contractor is an entity other than an individual, it hereby certifies that:

- (1) A drug free work place will be provided for the Contractor's employees during the Term of this Agreement; and
 - (2) It will secure from any subcontractor hired to work in a drug free work place the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name), certifies to Contractor that a drug free work place will be provided for subcontractor's employees during the performance of this Agreement pursuant to paragraph 7 of subsection B of O.C.G.A. § 50-24-3."
 - c. Contractor may be suspended, terminated, or debarred if it is determined that:
 - (1) Contractor has made false certification hereinabove.
 - (2) Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. § 50-24-3.
24. Compliance with Laws and Agency Policies.
- a. Contractor shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, rules and regulations. Contractor also shall comply, and shall require its employees to comply, with all applicable State and Agency policies and standards in effect during the performance of this Agreement, including but not limited to Agency policies and standards relating to personnel conduct, security, safety, confidentiality and ethics.
 - b. Certain equipment, software and technical data which may be provided hereunder may be subject to export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the U.S. or any other country. Contractor shall be responsible for complying with all export and re-export laws and regulations including without limitation, (i) local license or permit requirements, (ii) export, import and customs laws and regulations (such as the export and re-export controls under US Export Administration Regulations and/or similar regulations of the US or any other country) which may apply to certain equipment, software and technical data provided hereunder, and (iii) all applicable foreign corrupt practices acts.
 - c. Contractor shall obtain and maintain, and shall cause its subcontractors to obtain and maintain all approvals, permissions, permits, licenses, and other forms of documentation required in order to comply with all applicable foreign or domestic laws, rules or regulations.
 - d. Contractor agrees that any failure by Contractor or Contractor's employees to comply with any of the obligations of this Section may be treated by GTA as a material breach of this Agreement by Contractor.
25. Subcontractors. Any subcontractors must be approved in advance by GTA, which approval may be withheld in GTA's sole discretion.
26. Publicity. Contractor shall not release without GTA's prior written approval any publicity regarding the program or Services provided herein, including but not limited to, notices, information, pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contractor, identifying the State of Georgia, the GTA or an Agency receiving goods or services under this Agreement; however, Contractor may reference this Agreement in proposals for other contracts without GTA's approval.
27. Non-exclusivity. This Agreement is entered into solely for the convenience of the State of Georgia, and in no way precludes GTA, the State or any Agencies from obtaining like goods from other suppliers upon prior approval of the GTA. Such approval shall be made at the sole discretion of the GTA, and shall be conclusive. Such approval shall only be granted when it is deemed to be in the best interest of the State to do so.
28. Title and Risk of Loss.
- a. Title to Leased Equipment. Any leased Equipment is and shall at all times remain the sole property of the Contractor, and the Agency shall have or acquire no right, title or interest therein, except that that Agency shall have the option of purchasing any Equipment leased hereunder at any time during the Term or upon the expiration of the Term for a mutually agreeable price. In the event that an Agency wishes to purchase leased Equipment, the Agency will notify the

Contractor of its intent to purchase the Equipment by issuing a Purchase Order Correction. There shall be no prepayment penalties assessed for early pay out. There is no obligation on the part of an Agency to purchase any Equipment, nor does this Agreement impose any obligation on the part of any Agency other than as specifically stated herein.

- b. Title to Purchased Equipment. Title to any purchased Equipment shall remain with the Contractor until it is accepted by Agency in accordance with Section 5 above.
 - c. Risk of Loss. All risk of loss or damage to the Equipment, including risk of transit, shall remain with the Contractor until it is accepted by Agency in accordance with Section 5 above. Insurance during shipment and until the Equipment is accepted by Agency is the responsibility of the Contractor.
29. Time is of the Essence. Time is of the essence with regard to performance of any Services under this Agreement, unless the parties agree otherwise in writing.
30. Entire Agreement. This Agreement, including all Exhibits and documents incorporated hereunder, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. No amendment to this Agreement shall be valid unless made in a writing of equal dignity and signed by both parties. No representation, request, instruction, directive or order, made or given by any official of Agency or of any agency of the State of Georgia, whether verbal or written, shall be effective to amend this Agreement or excuse or modify performance hereunder unless reduced to a formal amendment and executed as set forth above. Contractor shall not be entitled to rely on any such representation, request, instruction, directive or order and shall not, under any circumstances whatsoever, be entitled to additional compensation, delay in performance, or other benefit claimed for relying upon or responding to any such representation, request, instruction, directive or order.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first written above.

Georgia Technology Authority

CONTRACTOR

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____